

**OPINION
59-194**

June 5, 1959 (OPINION)

MUNICIPAL GOVERNMENT

RE: Municipal Memorial Levy - Armory Levy - Expenditure

This is in reply to your letter of May 27, 1959, in which you ask for an opinion of this office concerning section 40-5901 of the 1957 Supplement to the North Dakota Revised Code of 1943. Your question is stated as follows:

"The question has arisen as to the uses for which the funds derived from such tax may be spent. Must such funds be spent solely for building repairs, alteration, reconstruction and actual building maintenance such as painting and other protective measures for the building itself. Or, may these funds be used for what might be classed more in the nature of operational expenses, such as the following: electricity, janitor wages, fuel, janitor supplies, water and sewer services, light bulbs and miscellaneous expenses?"

The pertinent portion of Section 40-5901 of the 1957 Supplement to the North Dakota Revised Code of 1943 reads as follows:

"The governing body of any municipality maintaining an armory annually may levy a tax in addition to all levies now authorized by law, and not subject to the mill levy limitations prescribed by law, of not to exceed two mills on the net taxable assessed valuation of all property, in the municipality for armory or memorial hall maintenance, repair, alteration, and reconstruction." (emphasis supplied)

The word "maintenance" seems to have no precise legal significance in the construction of statutes, but its meaning appears to vary with the law and purpose to be accomplished. In 54 C.J.S. 904 we find this definition of the word.

"MAINTENANCE. A large term whose meaning depends on the surrounding circumstances and the connection in which it is applied. . . .

While maintenance includes the idea of keeping in repair, and, is frequently used in the sense of keeping a thing in good condition by means of repairs, it has a very much broader meaning and means to keep or preserve in good condition, and this may, and usually does, involve the making of repairs."

The term is usually defined to mean the upkeep, or preserving condition of property to be operated. See, e.g., *San Francisco & P.S.S. Co. v. Scott*, 253 F. 854 (D.C.); *Grand Rapids & I. Ry. Co. v. Doyle*, 245 F. 792, 797 (D.C.). In *Orleans Parish School Board v. Murphy*, 101 So. 268, 269 (Louisiana 1924) the court held that work performed by a janitor was not maintenance so as to warrant payment

of janitors salaries out of the fund, since maintenance means the holding, keeping or preserving buildings in their existing state or condition.

In view of the usually accepted definition of the term "maintenance" it is our opinion that the term, as used in section 40-5901 of the 1957 Supplement to the North Dakota Revised Code of 1943, refers to actual building maintenance and not to operational expenses such as electricity, janitor wages, fuel, janitor supplies, water and sewer services, light bulbs and miscellaneous expenses. Since such operational expenses would not fall within "repairs, alteration, reconstruction" as used in the statute, the fund provided for in section 40-5901 may not be used to pay such operational expenses.

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